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UNITED STATES DEPARTMENT OF TRANSPORTATION**

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**COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE
PROTECTION, AND CYBERSECURITY**

UNITED STATES HOUSE OF REPRESENTATIVES

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Mr. Chairman and distinguished members of the Subcommittee: thank you for the opportunity to appear before you today to discuss the Department of Transportation's ongoing efforts to improve the secure transportation of hazardous materials.

Introduction

We understand the Committee is currently considering options for modifying background check requirements for Commercial Driver's Licenses (CDL). In particular, the Committee is considering narrowing the list of materials required for background checks. Like our colleagues at the Department of Homeland Security, we believe an opportunity exists to improve the safety and security of hazardous materials movements, by modifying the current requirements. We believe any such modification should be predicated upon a risk-based analysis rather than a blanket adoption of an environmental and safety list currently used. We believe modifications to the list, which would require modification of the USA PATRIOT Act, should be developed through the collective efforts of all stakeholders, including DHS, DOT, other interested Federal agencies, States, and the industry.

DOT has considerable expertise in assessing both the safety and security risks associated with the transportation of hazardous materials and we look forward to working very closely with DHS on this issue.

DOT's Hazardous Materials Program

The Pipeline and Hazardous Materials Safety Administration (PHMSA), along with other modal administrations at DOT, administers a comprehensive, nationwide program designed to protect our Nation from risks to life, health, property, and the environment inherent in the commercial transportation of hazardous materials.

Hazardous materials are essential to our citizens, and to our economy. These materials fuel automobiles; heat and cool our homes and offices; and are used in farming, medical applications, manufacturing, mining, and other industrial processes. More than 3 billion tons of regulated hazardous materials – including explosive, poisonous, corrosive, flammable, and radioactive materials – are transported each year.

We oversee the safe and secure shipment of over 1.2 million daily shipments of hazardous materials moving by plane, train, truck, or vessel in quantities ranging from several ounces to thousands of gallons. These shipments frequently move through densely populated or sensitive areas where an incident could result in loss of life, serious injury, or significant environmental damage. Our communities, particularly the public and workers engaged in hazardous materials commerce, count on the safe and secure transport of these shipments.

The Department's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. Since 9/11, we have moved aggressively, recognizing and addressing safety and security issues associated with the commercial transportation of hazardous materials.

Hazardous materials safety and security are mutually interdependent activities. This principle was recognized by Congress in the Homeland Security Act of 2002. Section 1711 of this act amended the Federal hazardous materials transportation law to authorize the Secretary of Transportation to "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce."

DOT shares responsibility for hazardous materials transportation security with DHS. The two departments consult on security-related hazardous materials transportation requirements and matters to assure these requirements are consistent with the Nation's overall security policy goals and objectives. We constantly strive to assure our two departments coordinate our efforts so that the regulated industry is not confronted with inconsistent regulations.

Hazmat CDL and Security Background Checks

Pursuant to the Commercial Motor Vehicle Safety Act of 1986, commercial motor vehicle drivers transporting placarded hazardous materials under the DOT Hazardous Materials Regulations must have a hazardous materials endorsement. This endorsement to a basic CDL reflects that drivers transporting hazardous materials are trained and possess the necessary knowledge to safely handle the specific materials they transport.

In the aftermath of the 9/11 attacks, Congress enacted the USA PATRIOT Act. The PATRIOT Act prohibits a State from issuing a license to operate a motor vehicle transporting hazardous materials in commerce unless the Secretary of Transportation has first determined the individual does not pose a security risk warranting denial of the license. The responsibility for this determination was subsequently transferred to the Secretary of Homeland Security.

In 2004, DOT and DHS issued regulations implementing the hazardous materials licensing provisions of the PATRIOT Act. DHS's regulation established procedures for determining whether an individual poses a security threat warranting denial of a hazardous materials endorsement for a CDL and for appealing and issuing waivers to such determinations. DOT issued a companion regulation amending Part 384 of the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit States from issuing, renewing, transferring, or upgrading a CDL with a hazardous materials endorsement unless the Attorney General has first conducted a background records check of the applicant, and DHS has determined the applicant does not pose a security threat warranting denial of the hazardous materials endorsement. DOT's companion regulation also extends the list of hazardous materials for which an endorsement is required to include "select agents" as designated by the Centers for Disease Control and Prevention. Thus, DHS and DOT regulations work in concert to achieve an interrelated regulatory safety and security framework.

Proposals to Modify Background Check Requirements

As noted earlier, DOT has vast experience in regulating the safe and secure movement of hazardous materials. Through PHMSA and other modal administrations, our regulations establish a prevention-oriented risk management system focused on identifying and reducing both the probability and quantity of a hazardous material release. We collect and analyze data on hazardous materials – incidents, regulatory actions, and enforcement activity – to determine the safety and security risks associated with the transportation of hazardous materials and the best ways to mitigate those risks.

We believe modifications to the list of materials triggering a driver background check must be based upon a qualitative, scientific, risk-based analysis. Please allow me to briefly discuss some of the issues that should be considered as part of this analysis.

First, we must analyze the relative risk for diversion and misuse of the hazardous materials being considered for exclusion from the background requirements. Second, we cannot limit our review to individual materials, but rather must consider all possible safety and security risks which come from instances where various combinations of relatively low risk hazardous materials could result in substantial death, injury, or damage to the environment. Third, we must consider factors affecting vulnerability to shipments in transport, and finally, we must also carefully analyze the degree to which driver background checks would identify and address those potential vulnerabilities.

Not to be overlooked is the role fulfilled by our State partners. It is necessary that any possible modifications to the current regime be done in full partnership with them. Establishing a new endorsement on the CDL would require costly revisions to the information technology systems in all 50 States and the District of Columbia. The States have just completed major revisions to implement the current PATRIOT Act background check regulations and other changes to the CDL requirements mandated by the Motor Carrier Improvement Act of 1999. States are also preparing for implementation of the Real ID Act, requiring yet further substantial changes to their systems. We believe working closely with our partners, including The American Association of Motor Vehicle Administrators (AAMVA), is critical as we move forward.

Ongoing DOT Hazardous Materials Security Initiatives

In 2003, DOT published a final rule – known as HM-232 – requiring shippers and carriers of certain highly hazardous materials to develop and implement a security plan. The security plan must include an assessment of possible transportation security risks as well as the appropriate measures being taken to address the assessed risks. At a minimum, the security plan must address security risks associated with personnel security, unauthorized access, and en route security. The final rule also requires security awareness training for all hazardous materials employees and in-depth security training for employees of persons required to develop and implement security plans when transporting placarded hazardous material and other select toxins.

The Department has aggressively pursued enforcement of the security regulations. To date, the Federal Motor Carrier Safety Administration (FMCSA), the Federal Railroad Administration (FRA), and The Pipeline and Hazardous Materials Safety

Administration (PHMSA) have conducted thousands of security reviews and have initiated over 500 enforcement actions.

We continue to seek ways to enhance the security of hazardous materials shipments. For example, in consultation with DHS, we are moving forward to examine ways to enhance the security of rail shipments of Toxic Inhalation (TIH) materials. We are also considering other general requirements for enhancing the security of rail shipments of hazardous materials. DOT is actively considering whether, and to what extent, communications and tracking systems should be required for motor carriers transporting certain hazardous materials.

Conclusion

The Department of Transportation takes very seriously its responsibility to ensure the safe and secure movement of hazardous materials across our transportation system. Although we believe the regulatory framework currently in place is a good start, we recognize that there is always room for improvement. Together with DHS, we seek to achieve the highest level of safety and security possible, while at the same time, minimizing the burden and associated cost to commerce.

We recognize that there is more work to be done, and look forward to working with the Members of this Subcommittee, the Congress, and our stakeholders as we embark on a serious and open discussion with all interested parties. We will achieve a workable framework that enhances the safe and secure transportation of hazardous materials.

Mr. Chairman, I commend you and the members of this Subcommittee for your leadership. I thank you for the opportunity to be here today and look forward to answering any questions the Subcommittee may have.